

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**RICHARD KLEIN,**

**Petitioner,**

**Case No. C-1-01-794**

**v.**

**Judge Beckwith**

**HAROLD CARTER, WARDEN,**

**Magistrate Judge Black**

**Respondent.**

**RESPONSE TO PETITIONER'S MOTION IN RESPONSE TO RESPONDENT'S  
MOTION FOR LEAVE TO FILE DOCUMENTS MANUALLY**

Respondent manually filed exhibits, supplemental authority and the trial transcript manually in this case. Petitioner filed a Motion in Response in which he requests copies of all documents filed by Respondent in this case. Respondent served Petitioner with copies of the exhibits and supplemental authority. However, Respondent did not serve him with a copy of the trial transcript and does not intend to do so. A criminal defendant/habeas petitioner has no constitutional right to a free transcript in a collateral proceeding. United States v. MacCollom, 426 U. S. 317 (1976); Ross v. Moffitt, 417 U. S. 600 (1974).

Pursuant to 28 U. S. C. §2254(f) and as a convenience to this Court, Respondent's counsel has provided the Court with a copy of Petitioner's trial transcript which consists of six volumes. However, it is not reasonable to expect the Attorney General of Ohio to bear the clerical/copying/mailing expenses of giving a habeas petitioner a free copy of his transcript. Petitioner

had a right to a free transcript for purposes of his direct appeal. He pursued his direct appeal, in which he filed a supplemental brief in addition to the brief filed by his attorney. Either he had a copy of his transcript at that time, or his appellate attorney did. If he does not have a copy of the transcript, he should contact his appellate attorney and request the transcript. As an alternative, he can make a public records request to the state court or to this Court and pay appropriate copying fees in order to obtain the transcript. Similarly, the Ohio Attorney General would charge reasonable copying fees for providing a copy of the transcript.

Respectfully submitted,

Jim Petro  
Ohio Attorney General

S/Diane Mallory  
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Assistant Attorney General  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed by regular, first-class mail to Richard Klein, Ross Correctional Institution, P. O. Box 7010, Chillicothe, Ohio 45601, on or before the 25<sup>th</sup> day of May, 2004.

S/Diane Mallory